IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 19 of 1992
and
INCOME TAX REFERENCE No 26 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

H H MAHARAJA FATESINH FAMILY TRUST No. 1
H H MAHARAJA FATESINH FAMILY TRUST No. 2

Appearance:
MR MIHIR H JOSHI with MR MANISH R BHATT for Petitioner
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

In both the aforesaid references, the Income-tax Appellate Tribunal has referred the following identical question at the instance of the revenue :-

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the interest income earned by the beneficiaries of the assessee trust was not liable to be included in the income of the assessee Trust on the principle of constructive receipt ?"

2. The assessment years involved are 1981-82 and 1982-83 for both the references. We have heard Mr Mihir H Joshi for the applicant-revenue and Mr RK Patel for the respondent-assessee. At the time of hearing, our attention was drawn to the fact that the Tribunal had followed its own decision for assessment years 1979-80 and 1980-81. Against the said decision of the Tribunal, a reference was made to this Court being Income-tax Reference No. 252 of 1983 and the said reference came to be decided by the decision dated 7.1.1997. It is common case between the parties that the aforesaid decision in assessee's own case would squarely apply in relation to the present reference. For the reasons stated in the aforesaid decision in Income-tax Reference No. 252 of 1983, we hold that the Tribunal was justified in law in concluding that the interest income earned by the beneficiaries of the assessee trust was not liable to be included in the income of the assessee trust on the principle of constructive receipt. The questions referred to us in both the references are, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

The references stand disposed of accordingly with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-